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October 5, 2020

VIA ECF

The Honorable Robert M. Levy
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Rodriguez v. National Golf Links of America,
et al., Case No. 19-cv-07052 (PKC) (RML)

Dear Judge Levy:

My firm is co-counsel with Farrell Fritz for National Golf Links of America and William Muller. I write in brief response to plaintiff's October 2, 2020 letter, which argues that three scholarship recommendation letters submitted by Mr. Muller indicate that Mr. Muller held himself "out to be Plaintiff's supervisor" and that this therefore diminishes defendants' "argument that Plaintiff and the putative class were not 'employees' as that term is defined by the FLSA." ECF Dkt. No. 37 at 1. The letters do not support this conclusion.

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Of the three letters, only one has the word “supervisor,” the oldest letter written in 2012. ECF Dkt. No. 37, Ex.1 at NGLA00000028. In the two most recent letters, from 2013 and 2016, Mr. Muller simply writes, respectively, that he recommends Mr. Rodriguez for a Caddie Scholarship and that he had been “working directly with [plaintiff] for the past 12 years[.]” ECF Dkt. No. 37, Ex.1 at NGLA00000008, NGLA00000048. Moreover, Mr. Muller does not in any of the three letters describe any supervisory duties or say that Mr. Rodriguez was an employee of the National. And it also bears noting that regardless of whether Mr. Muller referred to himself as “supervising” Mr. Rodriguez in a single letter, it is not a person’s “job title nor the intended scope of his employment that is determinative; rather, it is the nature of [his] day-to-day activities that is determinative.” *Ebert v. Holiday Inn*, 2014 WL 349640, at n.4 (S.D.N.Y. Jan. 31, 2014), *aff’d*, 628 F. App’x 21 (2d Cir. 2015).

Finally, plaintiff’s letter directs the Court’s attention to two former caddies who have opted into this action. *See* ECF Dkt. Nos. 34, 35. The Court should be aware that one of these individuals, Nicholas Rodado, is a nephew of Mr. Rodriguez, who provided caddying services at the National for approximately one month about two years ago. Like Mr. Rodriguez, these opt-ins were never employees of the National.

We are available to provide any further information that Your Honor may need.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "MW", with a stylized flourish at the end.

Marc Wolinsky

CC: All Counsel of Record (via ECF)